

United States Cellular Corporation

Application for Review

WC Docket 08-71

David LaFuria

Lukas Nace Gutierrez & Sachs, LLP
8300 Greensboro Drive, Suite 1200
McLean, VA 22102
(703) 584-8678

I. Background

- U.S. Cellular was designated as a competitive ETC by the West Virginia PSC on February 25, 2008.
- U.S. Cellular submitted its initial line counts and initial rural/non-rural use certificates on time.
- U.S. Cellular filed its initial IAS and ICLS certifications late, but immediately upon discovering the omission.

I. Background (cont'd)

- On July 18, 2008, U.S. Cellular filed a request for a waiver of the certification deadline.
- On April 21, 2009 (DA 09-884), WCB denied U.S. Cellular's request for a waiver, but directed USAC to add the forgone support amounts to the total statewide support under the Interim CETC Cap.
- On May 21, 2009, U.S. Cellular sought Commission review of the Bureau's denial of its waiver request.

II. The FCC Should Grant U.S. Cellular's Application for Review

- The FCC has granted numerous requests for waiver of USF deadlines under similar circumstances.
- U.S. Cellular's case is easily distinguished from previous orders denying waiver requests.

A. There is Ample Precedent for Granting U.S. Cellular's Petition

- (1) USAC will not be burdened, since it already processed U.S. Cellular's timely-filed line counts and included them in its fund size projection. See, e.g.:
- *Flat Rock Tel. Coop. et al.*, DA 10-750 (4/29/2010)
 - *Citizens Comm. and Frontier Comm.*, 20 FCC Rcd 16761 (2005)

A. There is Ample Precedent for Granting
U.S. Cellular's Petition (cont'd)

(2) Due to severe staff disruptions, responsible personnel were not able to devote the necessary attention to USF certification items. See, e.g.:

- *Valor Telecomm. of Texas, L.P.*, 21 FCC Rcd 249 (2006)
- *Benton /Linn Wireless et al.*, 20 FCC Rcd 19212 (2005)
- *NPCR, Inc.*, 22 FCC Rcd 560 (2007)
- *MCI, Inc.*, 21 FCC Rcd 14926 (2006)
- *Verizon Comm., Inc.*, 21 FCC Rcd 10155 (2006)
- *Dixon Tel. Co. et al.*, 21 FCC Rcd 1717 (2006)

A. There is Ample Precedent for Granting U.S. Cellular's Petition (cont'd)

(3) Severe hardship would result from denial of \$1.78 million in support, as the company will be unable to complete key network upgrades and fulfill ETC build-out objectives. See, e.g.:

- *NPCR, Inc.*, 22 FCC Rcd 560, 561 (2007)
- *MCI, Inc.*, 21 FCC Rcd 14926 (2006)
- *Valor Telecomm. of Texas, L.P.*, 21 FCC Rcd 249 (2006)
- *Fibernet LLC*, 20 FCC Rcd 20316, 20317 (2005)
- *Citizens Comm. and Frontier Comm.*, 20 FCC Rcd 16761 (2005)
- *Alliance Comm. Coop., Inc. et al.*, 20 FCC Rcd 18250 (2005)

A. There is Ample Precedent for Granting U.S. Cellular's Petition (cont'd)

(4) U.S. Cellular filed the certifications immediately upon discovering the omission. Several other waivers were granted where petitioners made their filings several weeks or months late, but did so immediately upon discovery. See, e.g.:

–*Flat Rock Tel. Coop. et al.*, DA 10-750 (4/29/2010)

–*Northeast Iowa Tel. Co.*, 24 FCC Rcd 4818 (2009)

–*MCI, Inc.*, 21 FCC Rcd 14926 (2006)

–*Dixon Tel. Co. et al.*, 21 FCC Rcd 1717 (2006)

–*Alliance Comm. Coop., Inc. et al.*, 20 FCC Rcd 18250 (2005)

–*Smithville Tel. Co., Inc.*, 19 FCC Rcd 8891 (2004)

A. There is Ample Precedent for Granting U.S. Cellular's Petition (cont'd)

(5) The company has trained additional staff and taken other measures to ensure similar omissions do not occur again. See, e.g.:

- *Flat Rock Tel. Coop. et al.*, DA 10-750 (4/29/2010)
- *Advanced Comm. Technology et al.*, DA 08-2336 (2008)
- *Northwest Dakota Cellular*, 21 FCC Rcd 9179 (2006)
- *Citizens Comm. and Frontier Comm.*, 20 FCC Rcd 16761 (2005)
- *Benton /Linn Wireless et al.*, 20 FCC Rcd 19212 (2005)

A. There is Ample Precedent for Granting U.S. Cellular's Petition (cont'd)

(6) U.S. Cellular has a long history of compliance. In hundreds of filings, the company has never missed a USF filing deadline, before or since.

- *Western New Mexico Tel. Co., Inc. et al.*, WC 08-71, CC Docket No. 96-45, DA 10-107 (WCB rel. Jan. 22, 2010) at ¶ 15.
- *Citizens Comm. and Frontier Comm.*, 20 FCC Rcd 16761, 16763 (2005).

B. This case is distinguishable from other cases resulting in waiver denials

(1) U.S. Cellular described extenuating circumstances that did not amount to mere personnel turnover issues. Contrast with:

- *Cedar Valley Comm., Inc.*, 23 FCC Rcd 114 (2008)
- *HTC Services, Inc.*, DA 08-2337 (10/22/08)
- *NPI-Omnipoint Wireless, LLC et al.*, 22 FCC Rcd 4946 (2007)

B. This case is distinguishable from other cases resulting in waiver denials (cont'd)

(2) U.S. Cellular's omission did not arise from ignorance of, or confusion about, the FCC's rules. Contrast with:

- *Neb. Tech. & Telecomm. et al.*, DA 10-748 (4/29/10)
- *NPI-Omnipoint Wireless, LLC et al.*, 22 FCC Rcd 4946 (2007)
- *Corr Wireless Comm., LLC*, 22 FCC Rcd 5000 (2007)
- *South Slope Coop. Tel. Co.*, 19 FCC Rcd 17493 (2004)

B. This case is distinguishable from other cases resulting in waiver denials (cont'd)

(3) U.S. Cellular promptly cured its omission upon discovery. Contrast with:

- *Neb. Tech. & Telecomm. et al.*, DA 10-748 (4/29/10)
- *NPI-Omnipoint Wireless, LLC et al.*, 22 FCC Rcd 4946 (2007)
- *Cedar Valley Comm., Inc.*, 23 FCC Rcd 114 (2008)

Other Cases involving LSS Deadlines are Not Distinguishable

- The FCC has granted relief to petitioners seeking waivers of LSS support deadlines.
- It has been argued that because a missed LSS deadline results in one year's loss of support, there is significant hardship.
- In fact, LSS is only a portion of total support received by carriers, and the amount of support forfeited by U.S. Cellular is near the median suffered by LSS recipients.
- Many LSS waivers involve facts indicating far more lenient treatment than that which was afforded U.S. Cellular.
- U.S. Cellular is entitled to be treated consistent with the LSS line of cases.

**Comparison of U.S. Cellular vs. Incumbent LECs Receiving Waivers of
USF Deadlines Missed by More Than Two Months
(Ranked by Percentage of Annual Support Affected)**

Name of Carrier	Order	Type of Filing	Filing Delay	Amt. of \$	Total \$/year	% of Total
Columbus Tel Co	DA 05-3024 (11/22/05)	LSS projection	3-4 months	\$120,620	\$120,620	100.00%
Flat Rock	DA 10-750 (4/29/10)	LSS data submission	6 months	\$87,000	\$238,320	36.51%
Alliance/Hills	DA 05-3024 (11/22/05)	LSS data submission	4-5 months	\$951,804	\$2,920,694	32.59%
Smithville Tel Co	DA 04-1393 (5/18/04)	LSS projection	4 months 9 days	\$693,000	\$2,209,680	31.36%
Northeast Iowa	DA 09-886 (4/24/09)	LSS projection	4-5 months	\$156,000	\$500,796	31.15%
Palmerton Tel Co	DA 10-750 (4/29/10)	LSS data submission	4 months 20 days	\$324,360	\$1,148,496	28.24%
Northwest Iowa	DA 10-750 (4/29/10)	LSS data submission	5 months 3 days	\$500,000	\$2,026,308	24.68%
U.S. Cellular (Hardy)		IAS/ICLS initial certs	2 months 12 days	\$1,780,000	\$7,569,241	23.52%
Windstream	DA 10-750 (4/29/10)	LSS data submission	2 months 18 days	\$472,000	\$2,194,248	21.51%
North Eastern PA Tel Co	DA 10-750 (4/29/10)	LSS data submission	4 months 20 days	\$382,128	\$1,829,856	20.88%
West River Telecom. Coop.	DA 10-750 (4/29/10)	LSS data submission	5-6 months	\$469,212	\$2,578,008	18.20%

D. ILECs Appear to be Receiving More Favorable Treatment

- U.S. Cellular's circumstances are indistinguishable from those of many incumbent LECs whose waiver requests were granted.
- The Bureau has unfairly applied a strict 2- to 3-day definition of "promptly cure the omission" to wireless ETCs, while granting waivers to incumbent LECs whose filings were several months late.
- U.S. Cellular is not aware of a single instance in which an incumbent LEC's request for waiver of USF deadlines was denied.

III. USAC should be directed to comply with the Bureau's directive to adjust the cap

- Although the Bureau denied U.S. Cellular's waiver request, it ordered USAC to include the associated support amounts within the March 2008 cap (DA 09-884 at paragraph 11).
- Yet, USAC has yet to comply with the Bureau's order, explaining that it is awaiting "clarification" from the Commission.
- The Commission should direct USAC to comply with the Bureau's order.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Waiver of Universal Service High-Cost Filing Deadline)	WC Docket No. 08-71
)	
Federal-State Joint Board on Universal Service)	
)	
CTC Telecom, Inc. d/b/a Snake River PCS)	
Petition for Waiver of Deadline in 47 C.F.R. 54.314(d)(6))	

ORDER

Adopted: June 4, 2010

Released: June 4, 2010

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order, we grant a request filed by CTC Telecom, Inc. d/b/a Snake River PCS (CTC) for waiver of the universal service high-cost support filing deadline set forth in section 54.314(d)(6) of the Commission's rules.¹ For the reasons discussed below, we find that CTC has demonstrated that there is good cause to grant the requested waiver.

II. BACKGROUND

2. Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that "only an eligible telecommunications carrier [(ETC)] designated under section 214(e) shall be eligible to receive specific Federal universal service support,"² and such support shall be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."³ To implement this statutory requirement, the Commission has adopted various certification and data filing requirements.⁴

¹ CTC Telecom, Inc. Petition for Waiver of Deadline in 47 C.F.R. 54.301(d)(6), WC Docket No. 08-71 (filed Dec. 17, 2009) (CTC Petition); 47 C.F.R. § 54.314(d)(6).

² 47 U.S.C. § 254(e).

³ *Id.*

⁴ See, e.g., 47 C.F.R. §§ 54.301(b) and (c)(1) (data filings requirements for Local Switching Support), 54.307 (competitive ETC line count filing requirements for Interstate Common Line Support (ICLS) and other high-cost support), 54.313 (state certification requirements regarding the use of high-cost support by non-rural carriers), 54.314 (state certification requirements regarding the use of high-cost support by rural carriers), 54.802(a) (ETC line count filing requirements for Interstate Access Support (IAS)), 54.809 (carrier certification requirements regarding the use of IAS), 54.903 (data filing requirements for ICLS), 54.904 (carrier certification requirements regarding the use of ICLS).

3. Pursuant to section 54.314(a) of the Commission's rules, state commissions must file an annual certification with the Universal Service Administrative Company (USAC) and with the Commission stating that all universal service high-cost support received by rural carriers and competitive ETCs serving lines in a rural carrier's service area within the state will be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."⁵ This certification must be filed by October 1 of the preceding calendar year for support to begin in the first quarter of a subsequent calendar year.⁶ A newly designated ETC is eligible to receive high-cost support as of the effective date of its ETC designation if the state commission files the certification within 60 days of the effective date of the carrier's ETC designation.⁷ If the state commission does not file the certification within 60 days, the ETC will receive support on a going-forward basis from the date the certification was filed.⁸

4. *CTC's Petition for Waiver.* On December 17, 2009, CTC requested a waiver of the 60-day certification filing deadline to allow CTC to receive universal service high-cost support as of the effective date of its designation as an ETC.⁹ The Idaho Public Utilities Commission (IPUC) designated CTC as an ETC on July 24, 2009.¹⁰ Therefore, the IPUC should have filed a certification for CTC no later than September 23, 2009, to enable CTC to receive high-cost support retroactive to the effective date of CTC's ETC designation.¹¹ The IPUC, however, did not file the 2009 certification until February 1, 2010.¹² CTC argues that a waiver is warranted because the IPUC's mistake caused it to lose support.¹³

III. DISCUSSION

5. We find that CTC has demonstrated that there is good cause to waive section 54.314(d)(6) of the Commission's rules.¹⁴ Consistent with precedent, we find that good cause exists to

⁵ 47 C.F.R. § 54.314(a). The certification requirement for non-rural carriers is set forth in section 54.313 of the Commission's rules. 47 C.F.R. § 54.313.

⁶ 47 C.F.R. § 54.314(d)(1). If the October 1 deadline for first quarter support is missed, the certification must be filed by January 1 for support to begin in the second quarter, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter.

⁷ See 47 C.F.R. § 54.314(d)(6); see also *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 20 FCC Rcd 6371, 6411, para. 92 (2005) (*ETC Designation Order*).

⁸ *ETC Designation Order*, 20 FCC Rcd at 6411, para. 92.

⁹ CTC Petition at 1; 47 C.F.R. § 54.314(d)(6). The Wireline Competition Bureau sought comment on the petition on January 12, 2010. See *Comment Sought on the CTC Telecom, Inc. Petition For Waiver of a Universal Service High-Cost Filing Deadline*, WC Docket No. 08-71, Public Notice, 25 FCC Rcd 163 (Wireline Comp. Bur. 2010). No comments were filed in opposition to the petition. U.S. Senators Mike Crapo and James Risch filed a letter in support of the petition. See Letter from Sens. Mike Crapo and James Risch, to Ms. Marlene H. Dortch, FCC, and Ms. Karen Majcher, USAC, WC Docket No. 08-71 (filed Feb. 19, 2010).

¹⁰ CTC Petition at 1.

¹¹ While CTC states that it missed the filing deadline, in this instance, the IPUC was responsible for filing the certification. See 47 C.F.R. § 54.314(a).

¹² Letter from Grace Seaman, Utilities Analyst, IPUC, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 96-45 and 00-256 (filed Feb. 1, 2010).

¹³ *Id.*

¹⁴ Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. (continued. . .))

grant a waiver when the missed filing deadline and the subsequent loss of support was due to state commission action, as opposed to actions of the carrier.¹⁵ The IPUC has made the necessary certification, albeit untimely. Although we are granting a waiver of section 54.314(d)(6) of our rules in this case and conclude that CTC should be allowed to receive federal high-cost universal service support as of the date of its ETC designation, we remind the IPUC that, in subsequent program years, it should take steps to ensure that all applicable certifications necessary to secure federal high-cost support are filed with the Commission and USAC before the expiration of the applicable filing deadline. In addition, we remind CTC of its independent responsibility to review and understand the Commission's rules so it is in a position to ensure that submissions are filed in a timely manner.¹⁶

6. We remind all filers that it is their responsibility to review and understand the Commission's rules to ensure that their complete and accurate filings are timely received in the appropriate places, regardless of the time and method of their filings.¹⁷ Filers now have many options by which to file, including U.S. Mail, other sources of commercial delivery, facsimile, and electronic mail (e-mail). For instance, any filer receiving funding from the high-cost universal service support mechanism may file timely via e-mail at hcfilings@HCLI.universalservice.org. Additional information regarding USAC's filing procedures and deadlines can be found at <http://www.usac.org/hc/tools/filing-tool/default.aspx>. We encourage filers to use any and all methods they deem necessary to ensure their filings are timely received.

(Continued from previous page)

1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008); *Northeast Cellular*, 897 F.2d at 1166.

¹⁵ See, e.g., *West Virginia Public Service Commission Request for Waiver of State Certification Requirements for High-Cost Universal Service Support For Non-Rural Carriers*, CC Docket No. 96-45, Order, 16 FCC Rcd 5784, 5786, para. 7 (2001) (granting a waiver of a section 54.313(c)(2)(i) deadline to accept a certification filed by the West Virginia Commission after the filing deadline); *Illinois Commerce Commission's Petition for Waiver and Leave to File Certification of Eligible Telecommunications Carrier Out-of-Time; Farmers Mutual Telephone Company Petition for Waiver of Section 54.314(d) Filing Deadlines for Submission of State Certification of Federal High-Cost Support for a Rural Carrier; Petition of the Wyoming Public Service Commission for Waiver of Filing Deadline for Rate Comparability Certification Pursuant to 47 C.F.R. § 54.313(d)(3)*, CC Docket No. 96-45, Order, 23 FCC Rcd 6664 (Wireline Comp. Bur. 2008) (granting waivers of sections 53.313(d) and 54.314(d) deadlines where the state commissions filed certifications after the deadlines and inadvertently omitted a carrier from a certification).

¹⁶ See, e.g., *Petition for Waiver of Universal Service High-Cost Filing Deadlines*, Etex Telephone Cooperative Petition for Waiver of Deadline in 47 C.F.R. 54.301(b) Petition for Waiver of Universal Service High-Cost Filing Deadline, WC Docket No. 08-71, Order, DA 10-767, para. 7 (Wireline Comp. Bur., rel. May 5, 2010); *Federal-State Joint Board on Universal Service, The Georgia Public Service Commission Request for Leave to File an Addendum to its State Certification of Federal Universal Service Support Eligibility Out-Of-Time*, WC Docket No. 08-71, CC Docket No. 96-45, Order, DA 10-749, para. 6 (Wireline Comp. Bur., rel. Apr. 29, 2010); *San Isabel Telecom, Inc. Petition for Waiver of Deadlines of Section 54.314(d) of the Commission's Rules, Petition for Waiver of Deadlines in Section 54.307(c) of the Commission's Rules*, CC Docket No. 96-45, Order, 21 FCC Rcd 14941, 14945, para. 10 (Wireline Comp. Bur. 2006); *South Slope Cooperative Telephone Company request for Waiver of Filing Deadline for High-Cost Universal Service Support*, CC Docket No. 96-45, Order, 19 FCC Rcd 17493, 17494, para. 4 (Wireline Comp. Bur. 2004).

¹⁷ See *supra* note 16.

III. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 214, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 214, and 254, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that this order IS ADOPTED.

8. IT IS FURTHER ORDERED that the petition for waiver of section 54.314(d)(6) of the Commission's rules, 47 C.F.R. § 54.314(d)(6), filed by CTC Telecom, Inc. IS GRANTED.

9. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett
Chief
Wireline Competition Bureau

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16 F.C.C.R. 18277, 16 FCC Rcd. 18277, 2001 WL 1218292 (F.C.C.)

Federal Communications Commission (F.C.C.)

Order

****1 IN THE MATTER OF REVISION OF THE COMMISSION'S RULES TO ENSURE COMPATIBILITY WITH ENHANCED 911 EMERGENCY CALLING SYSTEMS**

Wireless E911 Phase II Implementation Plan of Nextel Communications, Inc.

CC Docket No. 94-102
FCC 01-295

Adopted: October 2, 2001

Released: October 12, 2001

***18277** By the Commission: Chairman Powell issuing a separate statement; Commissioners Abernathy and Martin issuing separate statements; Commissioner Copps dissenting and issuing a statement.

I. INTRODUCTION

1. In this Order, we approve a plan proposed by Nextel Communications, Inc. and Nextel Partners, Inc. (Nextel) for its provision of wireless Enhanced 911 (E911) Phase II location capability. Under this plan, and because it appears that location-capable handsets will not be available to Nextel in time to meet the schedule in the Phase II rules, Nextel would be allowed additional time for its initial rollout of a handset-based Phase II solution. Nextel commits, however, to completing deployment of location-capable handsets by the end of 2005, the same deadline for all other carriers using a handset-based technology under our rules, and will remain subject to all other wireless E911 rules. Further, we require Nextel to file Quarterly Reports concerning its E911 implementation program, including both Phase I and Phase II deployments, to permit effective monitoring and enforcement of its progress and performance in complying with the rules and the terms and conditions of its plan. We also require that Nextel propose to deploy a compliant location technology in the event its proposed technology fails to satisfy Phase II

accuracy requirements. We find this alternative compliance plan to be justified by the special circumstances Nextel faces in deploying location capability for its iDEN air interface, the lack of viable alternatives as determined by its trial of location technologies, and the overall benefits to public safety of its proposed solution, and therefore, grant a temporary conditional waiver of the wireless E911 rules to allow implementation of this plan.

2. With this Order, along with the companion wireless E911 Orders adopted today, the Commission clears the way for the start of actual deployment of E911 Phase II. The deployment plans approved in these Orders apply to carriers who serve more than 75 percent of all subscribers for wireless phone service in the United States. Under these plans the major national carriers will begin deploying technologies to locate wireless 911 callers within the next several months. They also should achieve complete deployment of Phase II, in full compliance with the Commission's accuracy standards, in all areas across the nation where 911 call centers are ready and able to use this information by the end dates in the existing Commission rules - *i.e.*, no later than December 31, 2005. These carriers must implement Phase II in accordance with the terms of these approved schedules or they will be subject to enforcement action by the Commission. The quarterly reports to be filed by these carriers will allow the Commission to monitor the pace and overall progress of Phase I and Phase II deployment, and to facilitate the prompt enforcement of the milestones and other requirements of the plans approved today.

****2 *18278** 3. Despite the substantial progress to date, especially given the groundbreaking nature of these technologies, much remains to be done to achieve the FCC's fundamental goal of having wireless E911 Phase II capabilities deployed throughout the country. All necessary participants - carriers, the public safety community, technology vendors, network equipment and handset vendors, local exchange carriers, and this Commission - must continue to work aggressively in the coming months and years to ensure the promise of these new life saving technologies becomes a reality.

II. BACKGROUND

A. Phase II Framework

4. Under Phase II of the Commission's wireless E911 rules,

wireless carriers are required to provide the location of wireless 911 callers, a capability known as Automatic Location Identification (ALI).^[FN1] In establishing those rules, the Commission sought to be technologically and competitively neutral, allowing any location technology to be used that can comply with specified accuracy, reliability, and deployment schedule requirements. For example, the rules provide that handset-based location solutions must provide the location of wireless 911 calls with an accuracy of 50 meters for 67 percent of calls and 150 meters for 95 percent of calls.^[FN2] Carriers using a handset-based solution also must begin to offer one entry-level model with location capability no later than October 1, 2001 and must ensure that 95 percent of their customers have location capable handsets no later than December 31, 2005.^[FN3]

5. For carriers choosing a network-based solution, the rules provide that the technology must report the location of wireless 911 calls with an accuracy of 100 meters for 67 percent of calls and 300 meters for 95 percent of calls.^[FN4] A carrier using a network-based solution must provide ALI to 50 percent of its coverage area, or 50 percent of its population, beginning on October 1, 2001 or within 6 months of a Public Safety Answering Point (PSAP) request, whichever is later, and to 100 percent of callers within 18 months of that request or by October 1, 2002, whichever is later. Wireless carriers subject to the rules were directed to report their Phase II plans, including the technologies they plan to use, by November 9, 2000.^[FN5]

6. During the course of the E911 proceeding, the Commission recognized that the E911 deployment schedule was aggressive in light of the need for further technological advancement. Nonetheless, the Commission predicted that ALI technologies would generally be available in sufficient time for carriers to comply.^[FN6]

7. The Commission also recognized, however, that requests for waiver may be justified based on *18279 specific showings and discussed standards for such requests in the *E911 Fourth Memorandum Opinion and Order*.^[FN7] In the *E911 Fourth Memorandum Opinion and Order*, we explained that we would expect requests for waiver to be specific, focused, and limited in scope, with a clear path to full compliance.^[FN8] We also stated that carriers should undertake concrete steps necessary to come as close as possible to full compliance and should document their efforts, including the solutions they considered and why none could be employed in a way that complies with our Phase II rules. Finally, we stated that carriers should not

expect to defer implementing a location solution if one is available and feasible.^[FN9]

B. Summary of Nextel's Implementation Plan and Request

**3 8. In its November 9 Phase II implementation report, Nextel stated that it intends to deploy a handset-based location technology, assisted Global Positioning System (A-GPS). As part of this report, Nextel also requests relief that would allow it additional time to deploy this solution in its national network.^[FN10] Nextel claims that the deployment of A-GPS will benefit public safety because it will provide the most accurate location information possible, assisting in the provision of more effective emergency response than less accurate technologies.^[FN11] In addition, Nextel proposes, upon grant of relief, to commit a contribution of \$25 million over the next two years to help fund the upgrading of PSAP facilities to accept location information.^[FN12]

9. Nextel argues further that relief is justified by the unusual circumstances it faces.^[FN13] Nextel's network employs the iDEN air interface, which is used by only a handful of carriers in the U.S; Nextel is the only iDEN carrier operating on a national basis. Moreover, iDEN technology is provided by only one manufacturer, Motorola.^[FN14] According to Nextel, many location technology vendors showed little or no interest in developing iDEN-based location solutions and it had very few options for possible solutions.^[FN15] As a result, Nextel claims, A-GPS is the only accurate Phase II location solution available to it, as demonstrated by field trials it conducted in April 2000.^[FN16] Moreover, according to Nextel, Motorola must develop a prototype iDEN handset with A-GPS capability and modify the iDEN network infrastructure to support a handset-based solution. For these reasons, Nextel claims, handsets including A-GPS capability will not be available before October 1, 2002.^[FN17]

10. Accordingly, Nextel requests relief to permit a delay in the deployment of A-GPS capable *18280 handsets of one year to 23 months beyond the benchmarks for handset-based technologies in the Phase II rules, but to retain the December 31, 2005 end-date deadline in the Commission's rules for having almost all its subscribers on location-capable handsets.^[FN18] Specifically, Nextel proposed the following schedule for deployment of A-GPS-capable handsets:

LUKAS, NACE, GUTIERREZ & SACHS, LLP

8300 GREENSBORO DRIVE, SUITE 1200
MCLEAN, VIRGINIA 22102
703 584 8678 • 703 584 8696 FAX
WWW.FCCLAW.COM

RUSSELL D. LUKAS
DAVID L. NACE
THOMAS GUTIERREZ*
ELIZABETH R. SACHS*
DAVID A. LAFURIA
PAMELA L. GIST
TODD SLAMOWITZ*
TODD B. LANTOR*
STEVEN M. CHERNOFF*
KATHERINE PATSAS NEVITT*

CONSULTING ENGINEERS
ALI KUZEHKANANI
LEILA REZANAVAZ
—
OF COUNSEL
GEORGE L. LYON, JR.
LEONARD S. KOLSKY*
JOHN CIMKO*
J. K. HAGE III*
JOHN J. McAVOY*
HON. GERALD S. MCGOWAN*
TAMARA DAVIS BROWN*
—
*NOT ADMITTED IN VA

June 2, 2010

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, DC 20554

Re: United States Cellular Corporation
WC Docket No. 08-71

Madam Secretary:

During our May 19, 2010, meeting regarding U.S. Cellular's Application for Review of the Wireline Competition Bureau's decision to deny its request for waiver of high-cost filing deadlines, Bureau staff asked us to articulate an appropriate waiver standard for waiver requests, and to explain how U.S. Cellular meets those standards.

At the outset, we emphasize that no new standard need be developed. A consistent application of the existing standard is all that is required to provide U.S. Cellular with the relief it has requested. Below, we provide an analysis in response to staff's request.

A. The FCC's Multi-Factor USF Waiver Test.

The FCC has weighed multiple factors in evaluating carrier requests for waivers of USF filing deadlines:

- Lack of administrative burden to USAC;
- Extenuating circumstances;
- Severe hardship;
- Immediate remedying of omission;
- Adoption of safeguards against recurrence of omission; and
- History of compliance.

No single factor is dispositive. In a given request, one factor may be compelling enough that it outweighs the absence of one or more of the remaining factors. To cite two examples:

In evaluating Dixon Telephone Company's request for waiver of the LSS data filing deadline, the FCC did not find extenuating circumstances but rather that the omission was due to an "inadvertent oversight."¹ Finding that the company would lose an entire year's worth of LSS, the Commission concluding that "considerations of hardship weigh in favor of granting the requested waiver."²

In a 2008 order granting USF waivers to Advanced Communications Technology, Inc. and other petitioners, the FCC did not make a finding that hardship would result from strict enforcement of the rules, nor did it find that the petitioners had solid compliance track records.³ Despite the absence of these factors, the FCC concluded that waivers were appropriate because the petitioners made their filings within 14 days of the deadline and adopted safeguards to prevent similar omissions.⁴

In sum, applicable FCC precedent makes clear that a petitioner need not demonstrate all of the above factors, as long as compelling circumstances are shown under one or more of the factors.

B. U.S. Cellular Meets Every Factor of the FCC's USF Waiver Test.

Applying the multi-factor test, the facts set forth in U.S. Cellular's waiver petition easily meet the FCC's standard. Because U.S. Cellular's petition makes a strong showing under all of the factors, there is no question that U.S. Cellular is well within the mainstream of cases where the Commission has granted relief when some, but not all of the factors were present.

(1) Lack of administrative burden to USAC.

USAC will not be burdened by a grant of the waiver request. U.S. Cellular had already filed line counts in advance, so that USAC could process them and calculate the support amounts due upon eligibility. By the time U.S. Cellular was designated, USAC had already processed U.S. Cellular's line counts and included them in its fund size projections for the calendar quarter at issue. In other words, a grant of U.S.

¹ *Dixon Tel. Co. et al.*, 21 FCC Rcd 1717, 1718 (2006) ("*Dixon Waiver Order*").

² *Id.* at 1719.

³ *Advanced Communications Technology, Inc.*, WC Docket No. 08-71, CC Docket No. 96-45, 2008 WL 4681930 (WCB rel. Oct. 22, 2008) ("*Advanced Waiver Order*").

⁴ *See id.* at ¶ 11.

Cellular's waiver does not require the refile of line counts, nor does it require USAC to do any additional administrative work to process prior line count filings.

These circumstances are identical to those in which the Commission found USAC would not be burdened by a waiver.⁵

(2) Extenuating Circumstances.

U.S. Cellular's petition demonstrated that due to severe staff disruptions, responsible personnel at U.S. Cellular were not able to devote the necessary attention to USF certification items.

Specifically, U.S. Cellular was being subjected to high-cost USF compliance attestation audits in four states as part of the audit program conducted by the Office of Inspector General ("OIG"). These compliance attestation audits—which follow-up USAC reports have characterized as having imposed "unreasonably tight deadlines" for gathering audit data⁶—required labor- and time-intensive culling of data from various systems during the weeks following U.S. Cellular's ETC designation in West Virginia. *See Sorensen Declaration* at p. 2. Government auditors made their field visit to U.S. Cellular's offices during the last week of April, which was when the certifications in question were due for filing. *See id.*

In addition, the company was responding to several other unanticipated state and federal audits. Finally, the company was understaffed during the period at issue because of the sudden departure of a key employee responsible for USF compliance activities. *See id.* at p. 3.

These circumstances are similar to those of other petitioners who the FCC had found to have demonstrated extenuating circumstances.⁷

⁵ *See, e.g., Flat Rock Tel. Coop. et al.*, WC Docket No. 08-71, CC Docket No. 96-45, DA 10-750 (WCB rel. Apr. 29, 2010) ("*Flat Rock Waiver Order*") at ¶ 11; *Citizens Comm. and Frontier Comm.*, 20 FCC Rcd 16761, 16764 (2005) ("*Citizens Waiver Order*").

⁶ *See Universal Service Administrative Company, Final Report and Statistical Analysis of the 2006-2007 Federal Communications Commission Office of Inspector General High Cost Program Beneficiary Audits* (Sept. 10, 2009) at p. 6.

⁷ *See, e.g., NPCR, Inc.*, 22 FCC Rcd 560, 561 (2007) ("*Nextel Waiver Order*") (oversight due to redirection of staff to address matters related to merger with Sprint); *Verizon Communications, Inc.*, 21 FCC Rcd 10155, 10156 (2006) (departmental reorganization directly affecting employees responsible for universal service filings); *Dixon Waiver Order*, *supra*, 21 FCC Rcd at 1718 (department head was out on medical leave and a critical e-mail was overlooked or deleted as a result); *Fibernet LLC*, 20 FCC Rcd 20316, 20317 (2005) ("*Fibernet Waiver Order*")

Moreover, these facts are easily distinguished from those shown by others whose circumstances were not found to be deserving of a waiver.⁸

(3) Severe Hardship.

U.S. Cellular demonstrated that severe hardship would result from denial of \$1.78 million in support, as the company would be unable to complete key network upgrades and fulfill ETC build-out objectives. U.S. Cellular described how the loss of that support would jeopardize its ability to fulfill the detailed and specific build-out commitments it had made to the West Virginia Public Service Commission. U.S. Cellular has described specific cell sites that could not be constructed due to the loss of support, and it has committed to build three new cell sites in remote areas, using IAS/ICLS support at issue in this proceeding.

Other petitioners losing similar amounts of support have received waivers based on similar showings.⁹

Each day that passes without a grant of the requested waiver is a day that rural West Virginians must go without improved access to wireless communications. As of this writing, U.S. Cellular's network can only provide coverage to approximately 82% of the population residing within its ETC service area in the state.

(resignation of key employee); *Alliance Communications Cooperative, Inc. et al.*, 20 FCC Rcd 18250, 18251 (2005) ("*Alliance Waiver Order*") (disruption of accounting staff caused by corporate reorganizations and reassignments).

⁸ See, e.g., *NPI-Omnipoint Wireless, LLC et al.*, 22 FCC Rcd 4946 (2007) ("*NPI-Omnipoint Waiver Order*") (misunderstanding of information from USAC and lack of awareness of applicable requirements); *South Slope Coop. Tel. Co.*, 19 FCC Rcd 17493 (2004) ("*South Slope Waiver Order*") (confusion over applicable deadlines); *HTC Services, Inc.*, DA 08-2337 (10/22/08) ("*HTC Services Waiver Order*") (sole reason given was abrupt departure of office manager responsible for USF filings); *Cedar Valley Comm., Inc.*, 23 FCC Rcd 114 (2008) ("*Cedar Valley Waiver Order*") (no link demonstrated between fact that company was operating under Chapter 11 bankruptcy protection and the omission in question).

⁹ See, e.g., *Valor Telecomm. of Texas, L.P.*, 21 FCC Rcd 249, 252 (2006) ("*Valor Waiver Order*") ("We find that the loss of approximately \$1.5 million in IAS funding could cause significant hardship in the rural and high-cost areas served by Valor. We are concerned that the loss of such a substantial amount of IAS funding could undermine Valor's investments in its network, and thus its ability to ensure that customers have and maintain access to adequate services.") (footnote omitted); *MCI, Inc.*, 21 FCC Rcd 14926, 14929 (2006) ("*MCI Waiver Order*") (finding that the loss of approximately \$1.5 million in IAS "could undermine MCIMetro's future ability to serve customers in the high-cost areas of New York.")

To aid the Commission in understanding the need for increased build-out, U.S. Cellular has enclosed a map showing the company's network coverage through 2009. As shown in the enclosed map, there are very stretches of West Virginia where rural citizens cannot receive high-quality wireless service from U.S. Cellular. As stated previously, U.S. Cellular would use the support at issue to build at least three more cell sites in West Virginia if its waiver request were granted. There are very real and adverse consequences for West Virginia citizens that can be alleviated through a grant of U.S. Cellular's application for review.

(4) Omission promptly addressed.

U.S. Cellular filed the certifications immediately upon discovering the omission. This discovery was made two months after the deadline only because the company had every indication, through several communications with USAC staff, that the associated IAS/ICLS support payments were forthcoming. Only when the May 2008 disbursement was published in late June was the company aware that IAS/ICLS support was being withheld.

Several other petitions have been granted where the petitioners cured their omissions immediately upon discovery, but not until several weeks or months after the deadline.¹⁰

Conversely, waiver requests have been denied where the petitioner did not cure the omission until six months after the deadline.¹¹

Because U.S. Cellular made its filings immediately upon discovery of the omission, U.S. Cellular clearly has demonstrated that it promptly cured its omission under Commission precedent.

(5) Remedial measures.

U.S. Cellular demonstrated in its petition that it has trained additional staff and taken other measures, including setting up internal reminders and coordinating with

¹⁰ See, e.g., *Flat Rock Waiver Order*, *supra*; *Northeast Iowa Tel. Co.*, 24 FCC Rcd 4818 (2009) ("*Northeast Iowa Waiver Order*"); *MCI Waiver Order*, *supra*; *Dixon Waiver Order*, *supra*; *Alliance Waiver Order*; *Smithville Tel. Co., Inc.*, 19 FCC Rcd 8891 (2004) ("*Smithville Waiver Order*").

¹¹ See, e.g., *Neb. Tech. & Telecomm. et al.*, WC Docket No. 08-71, CC Docket No. 96-45, DA 10-748 (WCB rel. Apr. 29, 2010) ("*NT&T Waiver Order*"); *NPI-Omnipoint Waiver Order*, *supra*; *Cedar Valley Waiver Order*, *supra*.

outside counsel, to ensure similar omissions do not occur again. These steps are consistent with those described by petitioners that were granted waivers.¹²

(6) History of compliance.

In literally hundreds of prior filings, U.S. Cellular had never missed a line count or certification deadline due to an oversight. *See* Sorensen Declaration at p. 1. U.S. Cellular explained that it takes its regulatory obligations very seriously, and its long record demonstrates a very solid history of compliance with state and Commission ETC mandates.

Waivers have been granted to other petitioners that similarly described a good compliance track record.¹³

In sum, U.S. Cellular has demonstrated that the facts underlying its request support a grant under the Commission's existing waiver standard. No new standard need be articulated in order to grant relief to U.S. Cellular.

C. Competitive Neutrality Dictates That the Waiver Standard Applied to ILECs Must Be Applied to U.S. Cellular.

Under the Commission's fundamental universal service principle of competitive neutrality, universal service mechanisms must "neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another."¹⁴ In keeping with this principle, a consistent set of waiver standards must be applied to petitioners, whether they are incumbents or competitors.

In the context of USF deadline waivers, the principle of competitive neutrality is imperiled by the Commission's uneven treatment of petitioners based on their technology and competitive status. U.S. Cellular is not aware of a single case in which an ILEC has been denied a waiver of universal service filing deadlines. By our count, more than 30 ILEC waiver requests have been granted. By contrast, at least 20 waiver requests by competitive ETCs have been denied or partially denied.

¹² See, e.g., *Flat Rock Waiver Order*, *supra*, at nn.17, 25, 34, 43, 49; *Advanced Waiver Order*, *supra*; *Northwest Dakota Cellular*, 21 FCC Rcd 9179, 9180 (2006) ("Northwest Dakota Cellular Waiver Order"); *Citizens Waiver Order*, *supra*, 20 FCC Rcd at 16764; *Benton/Linn Wireless et al.*, 20 FCC Rcd 19212, n.41 ("Benton/Linn Waiver Order") (2005).

¹³ See, e.g., *Western New Mexico Tel. Co., Inc. et al.*, WC 08-71, CC Docket No. 96-45, DA 10-107 (WCB rel. Jan. 22, 2010) at ¶ 15; *Citizens Waiver Order*, *supra*, 20 FCC Rcd at 16763.

¹⁴ *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8801-02 (1997) ("First Report and Order").

Many of the waivers granted to ILECs have been based on factual scenarios virtually identical to those resulting in a denial of a competitive ETC's waiver request. In 2006, for example, the Commission granted a waiver to North River Telephone Cooperative, which filed its ICLS certification approximately two years late. North River never discovered the omission on its own, but rather the National Exchange Carrier Association ("NECA") alerted the company that it had failed to file an ICLS certification.¹⁵

Additionally, the Commission has granted several waivers to ILECs that missed their annual Local Switching Support ("LSS") data filing deadlines by as much as six months. Some of those petitioners had set forth no excuse other than simple oversight or confusion about the rules. At our meeting on May 19, it was suggested that waivers of LSS data filing deadlines constitute a special line of case law, since carriers missing an LSS deadline would have been required to forgo an entire year's worth of LSS due to their oversight and they would be burdened more than U.S. Cellular, which would only forego one quarter's worth of IAS/ICLS.

In response, we have reviewed the matter and conclude that the LSS line of cases suggests otherwise. With one outlier exception, the LSS cases involved support amounts consisting of 18% to 36% of the ILECs' total annual high-cost support. Denial of U.S. Cellular's request will cause the company to forfeit 23.52% of its annual high-cost support in West Virginia for the year in question. We cannot find any factual basis to differentiate carriers requesting LSS waivers from U.S. Cellular's request. Indeed, the loss of support available to U.S. Cellular, which is to be used to build new facilities in remote areas, is more harmful to rural citizens than would be LSS for ILECs, who are more inclined to use support to cover operating expenses and maintain prices.¹⁶

We also note that most of the ILEC petitioners had missed their LSS data filing deadline by more than four months, at least twice as long as in U.S. Cellular's case.

To demonstrate how U.S. Cellular's circumstances compare favorably to those of the ILEC - LSS waiver cases, U.S. Cellular has created a table setting forth the length of the filing delay and the percentage of overall annual support that would be lost by each affected carrier. A copy is enclosed for your reference.

¹⁵ *North River Tel. Coop. Petition for Waiver of the Deadline in 47 C.F.R. § 54.904(d)*, Order, 21 FCC Rcd 14937 (2006) ("North River Waiver Order").

¹⁶ Outside of the LSS context, there are several cases in which waivers were granted to ILECs that had made their filings more than two months late and had a similar percentage of their annual support impacted. See, e.g., *CenturyTel of Central Wisconsin and Telephone USA of Wisconsin*, 21 FCC Rcd 14633 (2006) (5 months late, 10.08% of annual support); *Valor Waiver Order*, *supra* (2 months, 2 days late, 9.62% of annual support); *North River Waiver Order*, *supra* (2 years, 2 months late, 22.78% of annual support); *Puerto Rico Tel. Co.*, 18 FCC Rcd 26325 (2003) (2 months, 7 days late, 25% of annual support).

Marlene H. Dortch, Secretary
June 2, 2010
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We hope that the information provided above enables the Bureau staff to conclude that U.S. Cellular has in fact met the FCC's existing waiver standard and that the public in rural West Virginia would be served by a grant of U.S. Cellular's Application for Review.

If you have any questions or require any additional information, please contact undersigned counsel directly.

Sincerely,



David A. LaFuria
Steven M. Chernoff

Enclosures

cc: Carol Matthey, Esq.
Jennifer McKee, Esq.
Amy Bender, Esq.
Alexander Minard, Esq.